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5 Receiver of Baystar Capital Management, LLC
and Lawrence Goldfarb
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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 SECURITIES AND EXCHANGE
COMMISSION,

12 Plaintiff,

13 v.

14 LAWRENCE R. GOLDFARB and
15 BAYSTAR CAPITAL
MANAGEMENT, LLC,

16 Defendants.
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18

Case No.: C-11-0938 WHA

**FOURTH INTERIM REPORT
TO THE COURT**

Date: N/A

Time: N/A

Judge: William A. Alsup

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20 By this pleading, the Receiver in the above matter, John W. Cotton (“the
21 Receiver”), reports for the fourth time to the Court on the progress to date of
22 his administration of the Receivership estate (“the Estate”) of the defendants.
23 The Receiver was appointed on June 26, 2012, pursuant to this Court’s order
24 that charged him with administering the assets of the defendants Lawrence R.
25 Goldfarb (“Goldfarb”) and his wholly owned company Baystar Capital
26 Management LLC (“Baystar”) and related wholly owned corporations for the
27 benefit of defrauded investors. The Receiver filed his first status report on
28 October 10, 2012 for the first three (3) months of the Receivership, from July

1 through September 2012. The Receiver's second interim report covered the
 2 nine (9) months ending June 2013, one year after the Receiver's appointment.
 3 This third interim report covered the Receiver's activity from July 2013 to June
 4 2014. This fourth interim report will cover the Receiver's activity from July
 5 2014 until October 2015.

6 A. The Securing of Estate Assets

7 As of the date of this report, all known assets of the Estate, with the two
 8 exceptions noted directly below, have been secured and reduced to cash.
 9 Previous reports to the Court have identified these assets in detail; together
 10 their liquidation resulted in \$ 6,696,390 in cash coming into the Estate bank
 11 account at California Bank & Trust ("CB&T"). The bulk of those assets,
 12 \$5,500,000, were distributed to the investors in May 2014.

13 1. LRG Capital

14 As the Court is aware, in April of this year, after approval by the three
 15 largest investors holding 93% of equitable interest in the Estate, the Receiver
 16 filed a motion to approve the sale of the illiquid investments of the Estate in the
 17 small, private fund known as LRG Capital, back to its general partner, After
 18 Court approval, this resulted in a final payment of \$ 8,609 and the elimination
 19 of LRG Capital's illiquid partnership interest. This reduced the number of
 20 illiquid investments to the two reported below. The current amount of the
 21 remaining distributable assets in the estate at the time of filing this report is
 \$794,019.00.¹

22 2. The Island Fund and Yacht Fund

23 The two remaining obstacles to a final liquidation of Estate assets are
 24 those arising from the residual, passive investments of the defendant Baystar in

25
 26 ¹ The SEC previously posted approximately \$90,000 with the Court Registry in 2012, which
 27 was received from defendant Goldfarb towards his disgorgement obligation before the
 28 Receiver was appointed. The SEC and the Receiver will shortly move the court by way of
 stipulation to have these funds returned to the Receiver for distribution to the defrauded
 investors as part of their final distribution. They are not included in the above balance.

1 (a) any remaining future random cash distributions from the Island Fund; and
2 (b) any remaining future potential equity value in the Yacht Fund.² Both the
3 Island Fund and Yacht Fund interests are private, limited partnership assets,
4 themselves holding interests in a distressed corporate debt fund and the day-to-
5 day operations of a global yacht docking and maintenance business,
6 respectively. Because of the privately-held nature of these two entities, and
7 their continued day-to-day operation by managing general partners over which
8 the Receiver has no legal or practical control, without securing the agreement
9 and cooperation of these general partners, the Estate cannot liquidate these two
10 assets to present cash value for a timely distribution to investors. Moreover, as
11 to the Yacht Fund which has never operated at an annual profit, and is only an
12 equity position in a private corporation, any recovery of Baystar's original
13 investment could require many years of waiting, during which time the Estate
14 would have to stay open, accrue fees for maintenance and possibly watch the
15 investment wither.

16 In order to accomplish some resolution to the issue of liquidating these
17 two assets to present value, the Receiver turned to the two largest investors for
18 assistance. Since late 2014 and continuing to the present, and in full
19 consultation with these large investors (who together hold 83% of the
20 Receivership estate asset value), the Receiver has been holding sporadic
21 discussions with the managing general partners of both privately held funds.³
22 These discussions have been directed toward the possibility of selling the
23 Baystar Capital LLC interests back to the limited or general partners of each
24 fund for a discounted, current cash payment to the Estate.

25 ² Glasshouse Technologies, in which the Estate held stock warrants expiring in June of
26 2015, filed for bankruptcy protection before expiration, making those warrants worthless to
27 the Estate.

28 ³ The two largest Baystar investors, SAC Capital and SDS Capital, are themselves hedge
funds with experienced senior management. A representative of each has been
communicating with the Receiver on the issue of the valuation and possible liquidation of
the Island and Yacht Fund interests.

1 The chief obstacle in proceeding with any meaningful discussions
 2 concerning a sale of these interests has been establishing their true value in
 3 present dollar terms. The Island Fund, which contains the remainder of a
 4 portfolio of CMBS's, or "collateralized mortgage bond" securities that were
 5 bundled and sold as separate investment securities by large Wall Street firms
 6 (such as Morgan Stanley) to various sophisticated investors, now only contains
 7 a few of the most distressed of its original assets.⁴ Nonetheless, some of the
 8 CMBS obligors continue to pay down, or refinance their debt, allowing
 9 infrequent cash payments to the Island Fund limited partners.⁵ These payments
 10 are sporadic, unpredictable and uneven in amount. It is therefor very difficult to
 11 "price" the current value of these old bonds. The Yacht Fund holds only one
 12 asset, 134,646 shares of Island Global Yachting IV Ltd ("IGY"). These shares
 13 were "estimated" by the Yacht Fund general partner in mid 2014 has having a
 14 possible value of between \$2.20 and \$2.80 per share. However, at the end of
 15 calendar 2014, IGY had a net loss of (\$4,306,553). The general partner has
 16 recently advised that the losses have continued in 2015. As a result it is
 17 difficult to price the current value of this private equity, although it is likely it
 18 will be less that the previous estimated values from 2014.

19 The Receiver, in order to avoid the likely large cost to the estate of
 20 hiring an independent valuation firm, in late 2014 enlisted the support of
 21 experienced SAC and SDS personnel to assist in valuing the remaining CMBS
 22 positions and the IGY financials.⁶ The theory behind this request to these two
 23 stakeholders is that (1) they routinely buy and sell illiquid investments and are

24 ⁴ According to both the Island Fund's general partner and the trading desk of SAC Capital,
 25 there are so few transactions in these remaining distressed bonds that giving them a reliable
 26 bid/ask spread is difficult.

27 ⁵ Indeed, since the last financial report to the Court, the Island Fund has made an additional
 28 \$199,190 in payments to the Receiver.

⁶ Both the Island Fund and Yacht Fund general managers have been helpful thus far in
 providing all financial information requested of them in order to make a valuation
 determination.

1 as well-positioned as any independent valuation firm to mark the Island Fund
2 securities with a market value, and evaluate the income statements of IGY; and
3 (2) to the extent they, as the largest beneficiaries of any Estate recovery are
4 satisfied with that recovery, then the Receiver and this Court can be assured
5 that any valuation arrived at for any sale is fair and acceptable as to them.

6 Arranging for this effort, however, has taken much longer than the
7 Receiver originally anticipated. The reasons for this are many, but in essence
8 they involve scheduling, conferences and coordination with numerous
9 personnel, including the general partners of both the Island Fund and Yacht
10 Fund, as well as the representatives of SAC and SDS Capital. Unfortunately,
11 notwithstanding the Receiver's persistent and continued efforts since mid 2014
12 to get a consensus view from the two largest investors, much time has
13 obviously passed in bringing the valuation efforts to fruition. This has not been
14 due to any delay on the part of the Receiver, but rather the schedules of the two
15 largest investors. Notwithstanding the long delays the past year, within the past
16 two weeks the Receiver has received approval from the two largest investors
17 for going forward with a buy out proposal that would be satisfactory for both.
18 Steps to accomplish this are now underway.

19 There is one unresolved legal issue with regard to the Yacht Fund if it is
20 found to hold realizable value, which is whether there are additional Baystar
21 Capital Management investors beyond those already identified by the Receiver
22 in the Island Fund side pocket, who may have some entitlement to any Yacht
23 Fund asset recovery. Documents provided to the Receiver from defendant
24 Goldfarb's former business partner suggest that there may be as many as seven
25 (7) additional Baystar investors who along with the dozen previously identified
26 Island Fund investors, also invested in the Yacht Fund side pocket. If that is
27 correct, there is some question as to whether and how much those investors
28 might be entitled to recover. The likely percentage amount of entitlement of
these seven appears to be insignificant in relation to the overall investment in

1 the Yacht Fund by the other Baystar investors who were also Island Fund
 2 investors, but nonetheless any entitlement to a distribution by them must be
 3 Investigated and resolved as part of the Receiver's final work.

4 B. Current Financial Condition of the Receivership Estate

5 The Estate currently holds \$794,019 in cash at CB&T, and the Court
 6 registry holds an additional \$90,000. Other than unbilled time of the Receiver
 7 for work completed since February 4, 2015, which is approximately \$10,000
 8 and any amount that might be owed to any federal and/or local taxing
 9 authorities, there are no other known liabilities.⁷ Based on the collections
 10 made by the Receiver, and the cost of operating the Estate for the past two
 11 years, the cost of the receivership to date has been less than 5% of the assets
 12 under his control.

13 C. Future Work for the Receiver

14 The only significant, remaining work to be done by the Receiver
 15 concerns the disposition of the privately held assets referred to above. The
 16 residual value in the ongoing future operation of the Island Fund and the Yacht
 17 Fund needs to be established, and then if possible, negotiated with the approval
 18 of the largest investors into a present value, sum certain which would then be
 19 distributed. Since two of the three largest investors are informed and
 20 experienced fund managers themselves, presumably their assistance, input and
 21 approval in any negotiations with the general partners of the Island and Yacht
 22 fund partnerships, will assure an acceptable and quick resolution. Once that is
 23 accomplished, the Estate can be wound down and a final report submitted to
 24 the Court. It is anticipated that such a resolution and a final report might be

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 27 ⁷ Based on the preliminary view of the Estate's tax accountant, there will be no taxes due for
 28 2015 as there is a significant tax loss carry-forward from the sale of the MREM real estate
 interest, along with the business expense payments to the creditors and the Receiver's firm
 for its work.

1 accomplished by the end of the first quarter of 2016, if not earlier, at which
2 time the Estate can be closed with a final distribution to investors.

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4 Dated: November 10, 2015

GARTENBERG GELFAND &
HAYTON LLP

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6
7 /s/ John W. Cotton

8 John W. Cotton, Receiver for
9 Baystar Capital Management and
10 Larry Goldfarb
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